

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SHANE GALLAGHER,

Plaintiff,

v.

GENEVA COUNTY COMMISSION,

Defendant.

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CIVIL ACTION NO.: 1:07-cv-660-WHA

MOTION FOR REMAND

Plaintiff moves this Court for an order remanding this cause to the Circuit Court of Geneva County, Alabama, on the ground that the cause was improperly removed hereto and is not within the jurisdiction of this Court in that:

1. The Eleventh Amendment to the United States Constitution “bars suit in federal court by an individual citizen against a sovereign state of the Union.” *Roach v. West Virginia Regional Jail*, 74 F.3d 46, 48 (4th Cir. 1996) (citing *Edelman v. Jordan*, 415 U.S. 651 (1974)).

2. Geneva County Commission is a state entity, and the Eleventh Amendment restricts the ability of a federal district court to exercise its subject-matter jurisdiction over an action brought against a state or one of its entities.

3. According to 28 U.S.C. §1447, if an action before a federal district court lacks subject matter jurisdiction, the cause must be remanded to state court.

4. Remand to state court, not dismissal, is appropriate in this action based on the lack of jurisdiction. Federal district court does not have jurisdiction over this action, and, therefore, cannot make a ruling on this matter. *Roach*, 74 F.3d at 49.

WHEREFORE, Plaintiff Shane Gallagher respectfully requests that this Court remand this action to the Circuit Court of Geneva County, Alabama.

Respectfully submitted this the 27th day of July 2007.

/s/ J.E. Sawyer,
J.E. Sawyer, Jr., (SAW004)
Attorney for the Plaintiff
203 South Edwards Street
Enterprise, AL 36330

CERTIFICATE OF SERVICE

I certify that on July 27, 2007 I filed the above and foregoing electronically with the Clerk of Court using the CM/ECF system and that notice of my filing of same will be:

Electronically served on:

Mr. C. Richard Hill, Jr., Esquire
Webb & Eley, P.C.
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Montgomery, Alabama 36124-0909

Honorable Gale Laye
Geneva County Circuit Court Clerk
200 North Commerce Street
Geneva, AL 36340

/s/ J.E. Sawyer,
Of Counsel